IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 8689 of 2007(H)

IA 2654/05 IN OS.125/2004 of MUNSIFF COURT, TIRUR
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PETITIONER:

M.ABOOBACKER HAJI,
S/O.MANAKANGATHU KUNHAVA, KURUMBATHUR,
P.O.PUTHANATHANI (TIRUR), MALAPPURAM DISTRICT.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA
SMT.A.R.DIVYA

RESPONDENT:

K.MAHROOF,
S/O.KARIKULATHU BEENRANKUTTY HAJI,
"STAR FOOTWEARS", PUTHANATHANI, TIRUR TALUK,
KURUMBATHUR AMSOM, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.FIROZ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the affidavit in support of the petition.

Ext.P2 true copy of the order dated 6.2.2007 in IA 2654/2005 in OS 125/2004

M.N.Krishnan, J.

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W.P(C).No.8689 of 2007

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Dated this the 14th day of November, 2007.

JUDGMENT

This Writ Petition is filed against Ext.P2 order passed in I.A.No.2654 of 2005 in O.S.No.125 of 2004. Plaintiff has moved the above application for amendment contending that while drafting the plaint, the rate of rent per day is shown as Rs.22.50 whereas it is really Rs.72.50. The plaintiff wants to correct it. On the other hand, the defendant would contend that it is not a bonafide application for amendment. The court below found that since Rs.22.50 is noted in the notice this cannot be allowed. At the stage of amendment, I feel that the court need not decide what is the rate of rent per day. When the plaintiff claims the rate of rent as Rs.72.50, the burden is exclusively on him to prove to the satisfaction of the court regarding the same.

2. Therefore, I feel that the amendment application need not be thrown out and it can be allowed. Therefore, the

impugned order is set aside and the application for amendment is allowed and the defendant is permitted to file additional written statement. If additional issues are to be framed that also may be done and the matter be disposed of in accordance with law. Till the amendment is carried out, additional court fee is paid and additional written statement is filed, the court is directed not to proceed with the trial of the case.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 14/11